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FILED

OCT 14 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

14 UNITED STATES OF AMERICA, } No. CR 10-00572 MAG
15 Plaintiff, }
16 v. }
17 MARK D. MESSERSMITH, }
18 Defendant. }
19 _____}

STIPULATION AND [PROPOSED]
ORDER CONTINUING HEARING TO
October 21, 2010 AND EXCLUDING
TIME FROM October 14, 2010 TO October
21, 2010 FROM THE SPEEDY TRIAL
ACT CALCULATION

20 The Parties, Mark D. Messersmith and the United States, acting through respective
21 counsel, hereby stipulate, subject to the Court's approval, that the hearing currently set for
22 October 14, 2010 at 2:00pm be vacated, and that the hearing be re-set for October 21, 2010 at
23 1:30pm. The defense is requesting the continuance of the hearing due to the need for additional
24 time for effective preparation, and the need to jointly negotiate a resolution in this matter.

25 The parties stipulate that the time between October 14, 2010 and October 21, 2010 is
26 excluded under the Speedy Trial Act, 18 U.S.C. §3161, and agree that the failure to grant the
27 requested continuance would unreasonably deny defense counsel reasonable time necessary for
28 effective preparation, taking into account the exercise of due diligence. Finally, the parties agree

1 that the ends of justice served by granting the requested continuance outweigh the best interest of
2 the public, and the defendant in a speedy trial and in the prompt disposition of criminal cases. 18
3 U.S.C. §§ 3161(h)(7)(A) and (B)(iv).

4

5 DATED: October 13, 2010

MELINDA HAAG
United States Attorney

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7 /s/
8 BRADLEY D. PRICE
9 Assistant United States Attorney

10 /s/
11 ROBERT CAREY
12 Attorney for Defendant

1 **[PROPOSED] ORDER**

2 Based upon the stipulation of the parties, and for good cause shown, the Court HEREBY
3 ORDERS that the hearing in this matter previously set for October 14, 2010 at 2:00pm is
4 vacated, and the matter is continued to October 21, 2010 at 1:30pm. Further, the Court
5 ORDERS that the time between October 14, 2010 and October 21, 2010 is excluded under the
6 Speedy Trial Act, 18 U.S.C. §3161. The court finds that the failure to grant the requested
7 continuance would unreasonably deny defense counsel reasonable time necessary for effective
8 preparation, taking into account the exercise of due diligence. Furthermore, the Court finds that
9 the ends of justice served by granting the requested continuance outweigh the best interest of the
10 public and the defendant in a speedy trial and in the prompt disposition of criminal cases. The
11 court therefore concludes that this exclusion of time should be made under 18 U.S.C. §§
12 3161(h)(7)(A) and (B)(iv).

13
14 IT IS SO ORDERED.

15 DATED:

16 10/14/10

17 HOWARD R. LLOYD
18 UNITED STATES MAGISTRATE JUDGE